

***Appendix H2***  
***U.S. Department of State Bureau of Oceans and***  
***International and Scientific Affairs letter***

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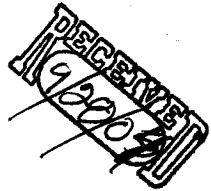
**United States Department of State**

*Bureau of Oceans and International  
Environmental and Scientific Affairs*

*Washington, D.C. 20520*

September 3, 2004

Rear Admiral Thomas H. Gilmour  
Commandant (G-M)  
U.S. Coast Guard  
2100 2<sup>nd</sup> Street, S.W.  
Washington, DC 20593



Dear Admiral Gilmour:

This letter serves as the State Department's response to the Coast Guard's letter of February 13, 2004 regarding the application of BHP Billiton LNG International, Inc. (BHP Billiton) for a license to establish a new offshore liquefied natural gas (LNG) importation terminal 13.9 miles off the coast of Ventura County, Southern California (to be known as Cabrillo Port). This letter also serves to fulfill the State Department's requirements under Section 106(e)(1) of the Maritime Transportation Security Act of 2002 (PL 107-295), which requires the Department of State to transmit to the Department of Transportation written comments as to the expertise or jurisdiction of the Department of State concerning the construction or operation of deepwater ports for natural gas pursuant to the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) (DWPA). The Coast Guard and the U.S. Maritime Administration (MARAD) are the lead agencies acting on behalf of the Department of Homeland Security and Department of Transportation, respectively. A substantively identical response is being sent to MARAD.

BHP Billiton proposes to establish a deepwater port 13.9 miles off the coast of southern California in 2,900 feet of water, in the U.S. Exclusive Economic Zone (EEZ). The facility will consist of a floating storage and regasification unit (FSRU) connected to two new parallel subsea send out pipelines that will tie into an existing onshore natural gas transmission pipeline system, which will be expanded to accommodate the additional supply. The FSRU, which will have the capability of regasifying up to 1.5 billion cubic feet per day, is a 286 meter x 65 meter, ship-shaped double-sided, double-bottom LNG storage and regasification vessel that will be moored to the sea bed by a fixed, turret-style mooring point with nine cables and

associated ocean floor anchor points. After reviewing the application of September 3, 2003 (as revised with Supplemental materials in December 2003, February 2004, and June 2004), and subject to the comments below, the Department of State concludes that the application is adequate, and that the issuance of a license pursuant to 33 U.S.C. 1503 will have no adverse effect on programs within the jurisdiction of the Department of State. Our specific comments follow.

The DWPA at 33 U.S.C. 1505(a) requires the Department of Transportation to consult with the Department of State regarding the environmental review criteria established at Appendix A to 33 CFR Part 148 for aspects over which the Department of State has jurisdiction. The Department of State serves as the primary Executive Branch coordinator for and determines U.S. foreign policy regarding several of the criteria listed in the DWPA, including but not limited to effects on the marine environment, effects on alternate uses of the oceans, such as scientific study, fishing and exploitation of other living and non-living resources, effects of land-based developments related to deepwater port development and effects on human health and welfare.

We find the environmental review criteria for deepwater ports in Appendix A of 33 CFR 148 to be adequate. Further, after review of the BHP Billiton license application, the Department of State determines that granting the license will not have significant adverse effects regarding United States foreign policy with regard to the criteria described above, to include global and regional fisheries agreements, international agreements for the prevention of marine pollution and international agreements regarding oceanographic research and study.

The DWPA at 33 U.S.C. 1509(d)(1) requires the Secretary of Transportation to designate, after consultation with the Secretary of State, among others, a zone of appropriate size around any deepwater port for navigation safety, and in accordance with recognized principles of international law. Accordingly, such zones are governed by three principal sources: the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), specifically Articles 22, 60 and 211; the International Convention on the Safety of Life at Sea, 1974 (SOLAS), Annex, Chapter 5, primarily Regulation V/10; and the General Provisions on Ship's Routeing, adopted by the International Maritime Organization (IMO) pursuant to Assembly Resolution A.572(14), as amended. The Department of State, as the lead agency for policy matters involving UNCLOS, and as the coordinator for matters involving the IMO, has specific expertise and jurisdiction in these matters. Any ship's routeing measure established outside the U.S. territorial sea requires approval and adoption by the IMO, through its Safety of Navigation Subcommittee and its Maritime Safety Committee.

The DWPA at 33 U.S.C. 1518(a)(3) requires the Secretary of State to notify the government of each foreign state having vessels under its authority or flying its flag that may call at a deepwater port, that the United States intends to exercise jurisdiction over such vessels. The notification must indicate that, absent the foreign State's objection, its vessels will be subject to U.S. jurisdiction whenever calling at the deepwater port or within an established safety zone (not greater than 500 meters) and using or interfering with the use of the deepwater port. Further, Section 1518(c)(2) states that entry by a vessel into the deepwater port is prohibited unless a bilateral agreement between the flag State of the vessel and the United States is in force, or if the flag State does not object to the exercise of U.S. jurisdiction.

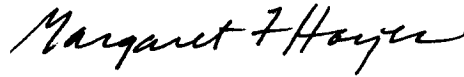
However, Title 33 U.S.C. Section 1518 precedes the entry into force of UNCLOS Article 60, which grants coastal States the exclusive right to construct, authorize and regulate installations and structures in its EEZ, including deepwater ports. It also precedes the designation of the EEZ of the United States, which grants us certain rights and jurisdiction under customary international law, as stated in UNCLOS Part V. While Article 60(7) indicates that a deepwater port does not have the status of an island, has no territorial sea of its own, and its presence does not affect the delimitation of the territorial sea, the EEZ or the continental shelf, the Government of the United States interprets UNCLOS Article 12 to mean that any roadstead located outside the territorial sea and used for the loading or unloading of ships is included in the territorial sea.

Thus, any ship calling at a deepwater port in our EEZ would be subject to U.S. jurisdiction as if it were in the territorial sea. As the proposed Cabrillo Port would be in the EEZ of the United States, this principle would apply. Any ship flying the flag of a party to UNCLOS would be subject to Articles 12 and 60 and would be bound to the same jurisdictional principles of 33 U.S.C. Section 1518, thus obviating the need for further bilateral agreements. However, if a ship flying the flag of a non-party to UNCLOS (Liberia, for example) were to call at the deepwater port, the State Department would only object to such calls if the non-party flag State had filed an objection to our assertion of jurisdiction.

Pursuant to the DWPA at 33 U.S.C. 1521, upon approval of the license to construct this deepwater port, the State Department will notify the governments of Mexico and Canada of such action, and will invite bilateral or multilateral discussions with them on the subject of natural gas deepwater ports, should either country desire.

In conclusion, the State Department has no objection to granting a license for the ownership, construction and operation of the Cabrillo Port deepwater port. If you have questions or need further information, my point of contact is Clay Diamond in the Office of Oceans Affairs. He can be reached at (202) 647-3946 or e-mail at [diamondcl@state.gov](mailto:diamondcl@state.gov).

Sincerely,

A handwritten signature in cursive script that reads "Margaret F. Hayes".

Margaret F. Hayes  
Deputy Assistant Secretary  
For Oceans and Fisheries, Acting